39-51

195 48.

File No. 3521/36- II

P.W DEPARTMENT

A CLASS

M BRANCH

Subject:— Employment of children Act- 1938

i) Rules Under Section 7 of —

ii) Appointment of Inspector under Section 6 of —

A [K].

V

II

[redacted] File No. 3581/38 — M.B.

[redacted] Scott. Slip. 24 A

39-51

195 48.

File No. 3521/36- II

A CLASS

P.W DEPARTMENT

M BRANCH

Subject:— Employment of children Act- 1938

i) Rules Under Section 7 of —

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A [K].

V

II

File No. 3521/36 — M.B.

Ltd. Scott. Slip. 24 A

G.R., G.D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET

Subject :—

File No. 3581/36 - II

P.W DEPT.

M BRANCH.

References :—

Copies from the main file A(M)

Date.	To whom sent.	Notes and instructions.

No. M.S.C. 1068.
Sachivalaya, Ahmedabad, 4th Jan.48.
Shahibagh

To

The Secretary to the Government of Bombay,
Public Works Department, Bombay.

Subject:- Proposed amendment of the employment of Children Act, 1938.

Reference:- Government endorsement No. 3521/36-M dated 15-10-1947.

In view of the position explained in the Government of India's letter No. L.3090 dated 14-9-47, the District Magistrates, Ahmedabad and Broach, state that there is no need to amend section 4 of the Employment of Children Act. The District Magistrate, Ahmedabad, further adds, that if the offences under the Act may be made cognisable and extraditable.

I am of opinion that the revival of the post of the Inspector will not serve the object in view. The Inspector, appointed under the Act, had a very extensive area under his jurisdiction. His periodic inspection of the Railway Stations did not, therefore, prove effective. If the legislation is to be properly enforced and made more effective, the only sure method is to make the offices under the Act cognisable, as pointed out in this office letter of even number dated 12-10-46. In view of the position explained by the Government of India, the offences need not be made extraditable.

Sd/- U. M. Mirchandani,
Commissioner, N.D.

3521/36
7225.

Public Works Department.

M. B.

The main file required for the disposal of this reference is put up separately with another case. This reference will be disposed of when the file becomes available.

(Thro' E.B.(II)& A.B.(II))

Id/-
16-2-48

Id/-
18-2-48

Where is the other file referred to? It was submitted on 5-2-48 and not yet received back yet?

Id/-
18-2-48

Public Works Department.

M. B.

Resubmitted with reference to A. Asstt. Secy's note above,

2. The file in question is in A.B.(II).

Thro' A.B. (II)

Id/-
18-2-48 3. The case in question has been passed on (submitted to the Sr. Asstt. Secy.) on the 19-2-48.

Id/-
20-2-48 Remind early.

Id/-
20-2-48

M. B.

A. B. (II) may please note the above instructions of A.A.S. and send the file in question to this Br, immediately after its receipt, for further action.

Id/-
21-2-48

3521/36/7225.

Public Works Department.

M. B.

Submitted with reference to G.E., No. 3521/36-M, dated the 15-10-47.

2. The Commissioner, N.D., was asked to advise whether (i) in view of the position explained by the Government of India (in their letter No. L-3090, dated the 14-9-47), the post of Inspector under the Employment of Children Act, 1938, may be revived and (ii) if amendment of the Act was still considered necessary to give further justification therefor. As re.(i) the Commissioner has replied in the negative. As re. (ii) his reply is that if legislation is to be properly expressed and made more effective, the only sure method is to make the offences under the Act enforced cognisable.

3. The Commissioner, N.D., has not given the necessary justification for making the offence cognisable. The main argument of the Government of Indian against the amendment is that even the agents who send children to the employers for work cacme within the purview of S. 4 of the Act and are therefore liable to be punished for contravertion thereof. The Government of India think that only in rare cases would there be the combination of two factors viz., (i) the employer being beyond the

border...

border (i.e. outside the jurisdiction of this Government's) and (b) his having no agent (Manager-In-Charge) to supervise the children and trust that a few cases of prosecutiry the agent would have a salutary effect. Prima facie, this argument does not seem to be cogent as it is quite possible that both the agent and and the employer are outside the jurisdiction of this Government. However, there does not seem to be any valid basis for the Government of India's assumption that on the sections of the States Railways involved in this case, an employer of children would generally have an agent who could be brought to book for breach if the Act. The Commissioner should have examined the validity of the above argument of the Government of India before pressing for amendment of the Act, as the latter does not seem to be inclined to consider our suggestion, unless additional grounds in support thereof are furnished. If it is considered worthwhile pursuing the matter, the Commissioner may be asked to examine the position denovo and furnish further justification for his sugestion.

Id/-
16-4-48 This is obviously "Labour" question. That Department may be requested to advise.

u.o.r., 16 the Labour Department, dt. 19-4-1948.

Labour Department.
C

Submitted with reference to P.W.D., note, dated the 16th April 1948 on pages 275-276 ante.

2. Attention in this connection is invited to -

1) Government letter, P.W.D., No.3521/36-M, dated the 20th May 1947 to the Government of India, Ministry of Labour at pp.231-23 ante.

2) Government of India, Ministry of Labour letter, No. L.309 dated the 14th September 1947 on pp. 247-249 ante, and

3) The Commissioner N.D's remarks onp. 273 ante. The Government of India has met our argument, namely that as employers are often residents of the Indian States, the Inspector cannot take action against them as the offences under the Acts are not extraditable, by pointing out that for the purpose of section 4 of the Employment of Chiledren Act, 1938, a person who employes a child....

child includes also the Manager in charge of an establishment in which the child is employed. They have pointed out that cases where employers as well as Manager who live on the border are extremely rare, and it the Agent lives in British India to whom the employer sent children to work, he would be liable to be punished under section 4 of the Act, while this argument explaines away why the offences should not be made extraditable - This Government has not supported the suggestion to make the offences extraditable, strongly - it does not meet the other difficulty pointed out by P.W.D. at p. 231, namely, that employers of children (which term includes the agent also) refuse to give necessary statements. No reasons seems to have been given by the Government of India against making these offences cognisable. Labour Department may therefore support the view that these offennes may be be made cognisable, if the legislation is to be made more effective and is to be properly enforced. The Commissioner, N.D., has also taken a similar view. As the Act is administered by the P.W.D. in respect of railways other than the Federal Railways that Department may ask the Commissboner N.D., to examine the position and furnish further justification for making the offences cognisable in the light of the difficulties experin--ced by him in the enforcement of the Act. Please see in this connection the view taken by this Department on pp. 218-220 ante. A question was also considred whether such offences underr the Factory Act should be made cognisable. The C.I.E. was of opinion that it is unnecessary to make the offence under the Factory Act cognisable as the Factory Department had experienced little difficulty in the matter. It was since decided in the pp. referred to by Jt. Secy. in his note dated the 5th April 1947, that the question of making offences under the Factory Act cognisable might be considered when it is found necessary to do so. Whereas we have a large Factory Inspection office to administer the Factory Act, there is no such machinery to administer the Employment of Children Act It seems that there is therefore more justification for making offences under the Employment of Children Act 'cognisable'.

3. Incidentally the Collector of Central Excise has had no difficulty in the administration of the Employment of Children Act, 1938, so far as its application to minor ports is concerned.

4. The full time Inspectors of Factories are responsible for the administration of the Employment of Children Act in the City of Bombay, B.S.D., Ahamedabad City and Cantt., Poona City and Cantt. and in other areas the sub-Divisional Magistrates, Mamlatdars and Mahalkaries, in

respect....

respect of the processes mentioned in the Schedule to the Employment of Children Act. The C.I.F. may be requested u.o. to state in the first instance whether any difficulty is experienced in the administration of the Act in respect of these processesna and whether there is any objection to the view that offences under the Employment of Children Act should be made 'cognisable'.

Id/-
29-4-48

Id/-
29-4-48

U.O.R., to C.I.F., Bombay dated the 29-4-48

Factory Department.

This Department has not experienced any difficulty in the administration of the Employment of Children Act in relation to its application to the processes listed in the Schedule. There is, however, no objection to the view that offences under the Act should be made 'cognisable'.

Sd/-
Chief Inspector of Factories,
Bombay Province.

No. F. I./7050 dt. 2-6-48.

u.o.r. to the Secretary to Govt., Labour Department.

Labour Department.
C. Br.

Submitted with reference to the O.N. dated the 19-2-48.

2. In the circumstances stated therein Labour Department may support the views that the offences under the Employment of Children Act, 1938, may be made 'cognisable'. It appears however that only the P.W.D. is experincing difficulty in the administration of the act in relation to its application to railways other than federal railways whereas the Collector of Central Excise and the C.I.F. have not experienced any difficulty in the administration the Act in relation to its application minor ports and the process listed in the Schedule to the Act these papers may now be returned to P.W.D. with their remarks.

Id/-
2-6-48

Id/-
4-6-48

I do not agree. The offence is not serious enough to be made cognizable. (See also A on p. 231). It is also not clear how it would help administration to make it cognizable. Surely the Railway Police are not going to arrest the manager without being sure of the age of the child, and that needs a medical certi-ficate. The best agency is that of the Inspector, his investigation and his compalint to a Court. The need is for an active and vigilant Inspector.

The Government of India would not lightly agree to making the offence cognisable, and on the merits I doubt if we have a strong case.

Since I have taken a view different from that on pp. 218-220, I mark this case to H.M.

Id/-
7-6-48

H. M. Lab.

I agree with Secretary.

Id/-
24-6

U.O.R., to P.W.D., dated 26-6-48

3521/36/34125

Public Works Department.

M. B.

In his letter No. M.S.C.1063, dated the 9-7-46, the Commissioner, N.D., reported that for the reasons stated below the Inspector appointed under the Employment of Children Act, 1938, found it difficult to carry out his duties and therefore the enforcement of the Act was not effective:

(1) Medicaal officers being available only at their Headquarters it was difficutl f r the Inspector to take to M.O. for the purpose obtaining an age certificate any children he found working at other stations;

(2) Employers of children refused to give necessary statements;

(3) Employers being often residents of the States the Inspector could not take action against them as the Offences under the Act are not extraditable. The Commissioner further suggested that the only method of making the Act effective was to make offices under it cognisable - vide his letter No. M/S.C. 1068 , dated the 12-10-46. After consulting the P. & S.D., the G. of I. in the Labour Department was requested under G.L. No. 3521/36-M, dated 20-5-47 to take steps for making offences under the Employment of Children Act, 1938 cognisable.

2.....

2. The Government of India, however, did not agree and pointed out Agents of persons who employed children would come under S. 4 of the Act and if such Agents were prosecute the desired prupose would be served, since only in rare case would both employer and his agent be outside British India. The Government of India further added that if the Provincial Government still thought that the Act should be amended additional reasons in support of the proposal should given vide Government of India, letter No. L-3090, dated the 14-9-1947.

3. The Commissioner, N.D., who was referred to in the matter has not given adequate reasons in support of his proposal. The Collectors of Central Excise states that no such diffhculty as reported by the Commissioner, N.D., has been experienced by any of the ex-officio Inspectors under the Act at the minor ports. The Secretary Labour Department opines that even if the offence is made congisable it is doubtful how it would help administration of the Act, since the Railway Police are not going to arrest the Manager without beind sure of the age or the child and that needs a medical certificate. He has suggested that the best agency (for the purpose of enforcement and of the Act) is that of an Inspector, his investiagation and compdint to a Court and that what is required is an active and vigilant Inspector. This view is concurred in by the H.M., Labour.

4. In view of what is stated in para. 3 above, the proposal to amend the Employment of Children Act so as to make offences under it cognisable may be dropped and the Commissioner, N.D., informed as at 'A' above.

Id/-
16-7-48

This is primarily a 'labour' question and this Department may agree with the view taken by Secretary L.D. and concurred in by H.M.Labour. The proposal to amend the Act may be dropped and Commissioner, N.D., may be informed as at 'A' above.

Id/-
17-7-48.

Secy. (R&B) Id/-
19-7

H.M. P.W.D. Id/-
20-7-48

8

LETTER

3521/36/34145

3521/36-M.

Public Works Department,
Bombay Castle, 14th August 1948.

To

The Commissoner, N.D.
Ahmedabad.

Sub:- Proposed amendment of the Employment of Children Act, 1938.

Ref:- Correspondence resting with your letter, No. M.S.C.1068, of the 4-2-48, on the subject mentioned above.

2. After careful consideration of your proposal, Government has come to the conclusion that there is no sufficient justification for making offences under the Employment of Children Act, 1938, cognisable. Government considers that the best agency for the enforcement of the Act is an active and vigilant Inspector and his investigation and complaints to a Court should yield the desired results.

3. In view of the above, you are requested to submit a fresh proposal for the proper enforcement of the Act.

Id/-
2-8-48

By order etc.,

Issued.

Id/-
5-8-48

D.A:- Nil.

Id/-
2-8-48

No. M.S.C. 1068
Ahmedbad, 26th August 1948.

To

The Secretary to the Government of Bombay,
Public Works Department, Bombay.

Subject:- Appointment of an Inspector under the Employment of Children Act, 1938.

Reference:- Government letter No. 3521/36-M, dated 4-8-1948.

In view of the remakrs in para 2 of Government letter, I would request you to move Government to accord their early sanction to the revival of the post of the Inspector in the grade of Rs. 100-8-140/-10-170, the post has remained vacant from 24-2-47 (vide Government orders in para 2 of this endorsement No. 3521/36-M, dated 20-5-47). A suitable candidate will be selected by the Commsioner and his name reported to Government for publication in the Bombay Government Gazette.

o.c. signed by the comm.

Sd/-
Commissioner, N.D.

3521/36
47793

M.B. Public Works Deptt.

Submitted with reference to this Govt, Letter No, 3521/36.M dated the 4/8/1948.

2.The Commr., N.D. now proposes, in view of the remarks in para 2 of the Govt. Letter referred to above, that the post of an Inspr. in the grade of Rs. 100-8-140-10-170 under the Employment of Children Act, 1933, which has been lying vacant since the 24-2-47, be revived.

3. As the Labour Deptt. has taken the view that the best method of enforcing the Employment of Children Act is the apptt. of an Inspr. and his investigation and complaint to a court, the Commr's proposal for the revival of the Inspr's post may be agreed to in consultation with the F.D. It may be observed that the scale of the Inspr's post previously sanctioned in this Govt. Letter No. 3521/36.E(II), dated the 23-5-45 was Rs. 80-5-95. As, however, the pay scale have now been up-graded, the scale of Rs. 100-8-140-10-170 now proposed by the Commr may perhaps be accepted.

4. By G.N.,P.& S.D. No. 3323/46-F, dated the 28-7-48 the Employment of Children Act, 1933, has been made applicable to the States which have since erged into this Province.The question of enforcement of the Act in these States may therefore be taken up now. So far, as the Deccan States are concerned, there is no minor Rly. or State Ry, there, except the Sangli State Rly, That Rly. too is likely to be taken over by the Govt, of India.It does not therefore seem necessary to appoint an Inspr. for that Rly, for the enforcement of the Act as the needful will be done by the G. of I. who are supposed to make apptts. in respect of the Federal Ry. s vide please draft rules at p. ante.

As regards the Gujarat States, it does not appear that any specific action is called for.The Commr N.D. may, however, be asked to state whether in view of the merger of the Gujarat States, it is necessary to amend the schedule to the Employment of Children (Rly. other than Federal Rys.) Rules, 1944.

Thro E.B.(II) & A.B.(III)
Id/-
20/9/48

5.As the selection of the candidate for the Inspectors post refd. to in para 3 overleaf will take some time, it is presumed that

...e post is not urgently required. In that case, the post may be sanctioned with effect from the next financial year 1949-50 i.e. from 1-3-49 in order to avoid complications in the accounting procedure during the current year.

6. Regarding the classificatio of expdre on account of the above post, attention is invited to G.L./G.E. No. 3521/36/E(II) dated the 23-5-45, and the v.o. refeces, from the A.G. B'bay and the F.D. underlying it. In view thereof, the expdre. will have to be debited to the head" 47.Misc/Deptts-B-Labour of children Act, 1938." Presumably, the Labour Deptt. will provide for the necy, funds as the employment is in con. with the prohibition of children to certain industrial employment and as the minor head'B-Labour' is controlled by the Labour Deptt. In that case the pps. may be referred u.o. to the F.D. as proposed and the Labour Deptt. also for concurrence.

Id/-
21/9/48

Id/-
21-9-48

Id/-
23/9/48

.....

It would be undesirable to postpone appointment of Inspector to 1949-50. The post may be sanctioned in consultation with F.D. from the date a suitable man is appointed by the Commor. for the post.

Regarding 'A' inquiry may be made with the Commor.N.D.

Id/-
24/9/48

Secy(R & B)

u.o. to Lab Deptt. , dt the 28/9/1948.
F.D.

Lab.Deptt
C.R. for

The papers underlying G.L./G.E. No. 3521/36-E(II),dated 23/5/45 referred to at 'A' on prepage are being obtained from the P.W.D. as per memo put up in the first instance.

Id/-
18/10/48

Id/-
20/10/48

.....

Lab.Deptt
C Br.

Please see the foregoing P.W.D. note on pp. 289-291 ante.

2. The Deptt administers the Employment of Children Act, 1938, in so far as the processes listed in the schedule to the Act, are concerned. The P.W.D., on the other hand, administers the Employment of Children Act in relation to minor railways. The sub-head B-10- Expenditure in connection with the Employment of children Act, 1938, under the head "47- Misc Deptts- B- labour" was ppened at the instance of P.W.D. vide their letter on p 31 ante in connection with the appointment of an Inpstr under that Act. This Deptt does not operate this particular sub-head. It will be seen that there has been no provisionk in respect of this sub-head during the last three years presumebly because the P.W.D. did not appoint any Inspector under the Act during the period. This deptt does not make any separate provision reg. the administration of the Act as this is done by the Factory Deptt. The presumption of P.W.D. then that this deptt will find the necessary funds on account of the expenditure to be incurred by them in connection with the post of Inspector is not correct. This may be passed on to F.D. throughx the P.W.D. with there remarks.

Id/-
10/11/48

Id/-
10/11/48

u.o. r. to F.W.D./F.D., daged 11/11/48

E.B.(II)

Submitted

(Thro' M. B. & A B (III)

Id/-
16/11/48.

A B (III)

Please see page 6 of the O.N.

2 In view of the Labour Deptt. u.o.r. overleaf, the funds required for the post in question will be provided by this Deptt. The Commr, N.D. will be asked, while sanctioning the post, to approach Govt. for the requisite funds.

Id/-
30/11/48 F.D. may see.

Id/-
2/22/48 U.O. to F.D. dt. 3/12/48.

Finance Deptt.
B. Br.

The facts of the case are briefly stated below.

Under the Employment of Children Act 1938 and the rules made thereunder a post of an Inspector in the scale of Rs. 80/5/2-95 was sanctioned for the purpose of securing compliance with the provisions of the Act referred to above, The appointment was made on a purely temporary basis for a period one year in the first instance vide G.N.P.W.D.No. 3521/36(II) dated 23.5.45, The Inspector however found it difficult to carry out his duties and therefore rendered the enforcement of the Act ineffective, Pl see in this connection the letters dt. 9/7/46 and dated 12/10/46 from the Commr. N.D. for the reasons explained therein, the Commr. also stated that be deemed the apptt. of an Inspr. a waste of time . He further stated that periodicinspection also would not be effective. Besides Mr. H.A . Patel who was holding the post of the Inspr. joined the Sales Tax Deptt. on 24/2/47 . In view of this and in view of the fact that it served no useful purpose, the Inspector, post was not filled in since then.

Attention is however invited to the Secy, Labour Deptt's note dated 7-6-48 approved by H.M. Labour, In the circumstances explained therein, the P.W.D. now proposed to [redacted] the post if the Inspector. The P.W.D. proposal may be agreed to and the post may be sanctioned upto 28-2-50 in the first instance.

Id/-
10-12

Id/-
10-12-48

U.O.R., dt to the P.W.D. dt. 13-12-48.

x with file 352/36

Thro. & U.S. (E)

.....

Letter 3521/36/4387

No. 3521/36-II-E(II).

Public Works Department,
Bombay Castle, 26th Jany.1949.

To

The Commissioner, C.D.

Subject:- Peon for the Inspector to be employed under the Employment of Children's Act, 1938.

Reference:- Your letter No. M.S.C. 1068, dated the 6the January 1949.

2. One temporary post of a peon in the grade of Rs. 30-1/2-35 prescribed for peons, is sanctioned, as a special case, for the period for which the Inspector's post has been sanctioned.

2. The expenditure should be debited to the head mentioned in

para. 3 of Government letter No. 3521/36-II-E(II), dated the 21st December, 1948 and you should apply for the requisite funds accordingly early in February 1950.

By order etc.,

D.A:- Nil.

Copy forwarded to ---

the F.D.,

the Labour Department,

the A.G., Bombay (through the F.D.),

for information, with reference to Government Endt. No. 3521/36-II-E (II), dated the 21-12-48.

Id/-
24-1-49

Id/-
25-1-49

.....

3521/36/45223

P. W. Deptt.

M. B.

Resubmitted with reference to D.S. (R.&B.)'s query at p. 121 ante and a letter No. MSC 1066, dated the 1-6-50, from the Comm. N.D.

2. The point at issue on these papers was the arrangements in regards to free issue of a Railway pass ~~x~~ for the inspectors~~x~~ appointed by this Government under the employment of C.A. 1938. In view of the Commissioner N.D's changed and it will have to be considered from another angle. Section 6 of the E. of C. Act empowers the "Competent Authority" ~~xxxxxxxxx~~ to appoint inspector for the purpose of securing compliance to the provisions for that Act. Accordi to section 2 of that Act, the "ECompetent Authority" in any respect of a Federal Railway means the Central Government and in other case the Provincial Government (now State Govt.). The R.L.A. in his opinion No.2211 dated 24-2-39 opined that this Government was the authority cometent to appointinspectors under section 6 ~~xfxxxxxx~~ and to make rules under Section 7 of the Act in respect of the Indian State Railways in so far as they are situtate in the Province of Bombay. This Government accordingly made the necessary

rule

ules under Section 7 of the Act in respect of the Indian State Railways in so far as they are situated in the Province of Bombay. This Government accordingly made the necessary rules under Section 7 of the Act in respect of the sections of the G.B.S R. Rly. and Bhavnagar State Rly. passing through the geographical limits of the Province of Bombay (State of Bombay) - vide G.N. No. 3521/36(1), dated the 23-5-1945. This Government alos later appointed an inspector under section 6 of the Act.

3. The G.B.S.Rly. has already been taken over by the Government of India and now according to the Report of the Commissioner, N.D., the Saurashtra Rly. has alos been taken over by that Government. As these Rlys. now cease to be State Rlys. contemplated in the sense in which they were formerly taken, it appears that this Government is no longer the "Competent Authority" under section 2 of the E. of C. Act, 1938, and that the function of appointing inspectors in respect of the sections of the former Indian State Rlys. which pass through the State of Bombay should now devolve on the Government of India. The R.L.A. may be requested to advise whether this view is correct.

4. Pending decision on this point, the inspector now functioning may be authorised to travel by ticket on the Saurashtra Rly. As regards the B.B. & C.I.Rly. in view of the reclassification from the 1-7-50, that Rly. should find no difficulty in issuing an Inter Class Free Pass to Shri Advani. The Commissioner may be advised accordingly before proposed reference to the R.L.A., is made.

sd/-
7-7-50. Para 1 of the draft:- It may be noted that perhaps Inter class accomodation will be provided only on a few paras as well as was case before 1-1-49. Hence in other cases, he will have to pay the staff between II & Inter.

Again I do not follow why the Saurashtra Rly. refuses to issue any pass while the B.B.C.I. was willing to issue III class pass. Wife wants to Saurashtra Govt.

Please discuss.

Id/-
8-9

PMB/18/7/56